IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8786 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M V SOLAMKI

Versus

STATE OF GUJARAT

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Appearance:

MR ARUN H MEHTA for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

MR ASIM J PANDYA for Respondent No. 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /02/2001

C.A.V. JUDGEMENT

#. The facts giving rise to this petition are as under :

#. The petitioner was appointed in Gujarat State Civil Services, Revenue Department as Mamlatdar in the year

1954. Ultimately, he was absorbed in IAS Cadre in the year 1978 and was given 1974 as the year of allotment. On 1-8-1987, the petitioner retired as District Development Officer, Ahmedabad after attaining superannuation age of 58 years. The petitioner was appointed, for about an year after retirement, as a Member of Gujarat Revenue Tribunal. He was, thereafter, appointed as a Member of Gujarat Public Service Commission on 19-8-1988 vide Annexure-'A'. The petitioner retired as a Member of Gujarat Public Service Commission on attaining the age of 62 years, which is the age of superannuation for the Members of Gujarat Public Service Commission, on 14-7-1991. The service conditions of Members of Public Service Commission are determined by the Governor by framing regulations under Art.318 of the Constitution. Regulation was framed by the Governor accordingly vide Annexure-'B' in the year 1960.

#. The petitioner was paid a salary of Rs.6,000=00 per month minus the pension, which he was entitled to, namely, Rs.2,400=00 per month. This was fixed under Regulation-5 of the Gujarat Public Service Commission (Conditions of Service) Regulations 1960.

#. The petitioner grievance is that, one Shri KN Zutzhi, who was a Member of the IAS voluntarily retired and was appointed as Chairman of the Gujarat Public Service Commission. He was paid full salary of Rs.7,500=00 per month plus full pension. One Shri VT Shah, who was Advisor to the Chief Minister and a Member of IPS took voluntary retirement and he was appointed as a Member of Gujarat Public Service Commission. He was paid Rs.6,000=00 per month plus full pension. It is this arbitrariness which has been challenged in this petition. The petitioner has sought relief that Regulation-5(2) of the Gujarat Public Service Commission (Conditions of Service) Regulations 1960 be declared ultra-vires being violative of Arts.14 and 16 of the Constitution of India. Further prayer is for quashing the orders passed by the State Government rejecting the representation of the petitioner on the subject.

#. In the counter affidavit, the factual allegation is not disputed. However, the discrimination alleged by the petitioner has been stated to be unjustified and unsustainable. In the counter affidavit, the distinction suggested is that, Shri KN Zutzhi had six years of service before superannuation in IAS Cadre, and so far as Shri VT Shah is concerned, he took voluntary retirement and had one year service left before superannuation and there was an urgent need to fill-up the post of Member in

Gujarat Public Service Commission, therefore, individual case is decided by the Governor under Rule-5(2). Hence, there is no violation of Arts.14 and 16 of the Constitution, nor the Regulation-5(2) is ultra vires.

#. Shri Arun H Mehta, learned counsel for the petitioner and Ms.Manisha Lavkumar, learned AGP have been heard. Shri Mehta has also submitted written arguments, in which four points have been raised for determination.

#. The first point is, can a Member of Gujarat Public Service Commission who is retired government servant, may be that he retired voluntarily or retired on superannuation and who forms one class of persons and who discharges same duties, be given two different pay scales depending upon the facts, whether they retired on superannuation or retired voluntarily or some service was left before being superannuated.

#. The second point raised by Shri Mehta was, whether such discrimination is violative of Arts.14 and 16 of the Constitution having regard to well-known principle of equal pay for equal work.

#. The third point pressed was, whether on true and correct interpretation of Regulation-5, and in particular sub-secs.2 and 3, it is upon the Governor to fix different pay scales for Members of Gujarat Public Service Commission when they form the same class of persons and discharge the same duties, and whether such fixation is violative or Arts.14 and 16 of the Constitution.

##. The last point pressed was, whether the respondent should be directed to pay the petitioner salary at the rate of Rs.6,000=00 per month plus full pension of Rs.2,400=00 for the period between 1-9-1988 to 14-7-1991. Reliance has also been placed by Shri Mehta on the Apex Court's verdict reported in AIR 1984 S.C. 541.

##. Shri Mehta also argued that, there are no guidelines in Rule-5(2) as to how fixation of salary of a Member of Public Service Commission is to be done by the Governor, and in the absence of specific guidelines, action of the Governor may in some cases be arbitrary. He, therefore, suggested that suitable guidelines be issued for fixation of pay of Members of Public Service Commission.

##. The point raised by Shri Mehta can be decided after careful examination of Rules-5(1) and 5(2) of the Gujarat Public Service Commission (Conditions of Service)

Regulations 1960.

Regulation-5(1) provides that, 'Subject to the provisions of this regulation, there shall be paid to the Chairman a salary of Rs.7,500=00 per mensum and to each of the other members a salary of Rs.6,000=00 per mensum.'

There has been no violation of Rule-5(1) of the Regulation, either in the case of the petitioner or in the case of Shri KN Zutzhi and Shri VT Shah. The Member of the Commission is entitled to salary of Rs.6,000=00 per month, whereas the Chairman is entitled to receive salary of Rs.7,500=00 per month. Shri KN Zutzhi was appointed as Chairman and he was paid salary of Rs.7,500=00 per month plus full pension. Shri VT Shah was appointed as Member of Gujarat Public Service Commission, who was paid Rs.6,000=00 per month plus full pension. The petitioner was also paid salary of Rs.6,000=00 per month. His grievance, however, is that he was not granted full pension, which is discriminatory in nature vis-a-vis Shri VT Shah. On this point, there can not be any force in the contention that the principle of equal pay for equal work was violated. The Members were paid salary of Rs.6,000=00 per month and the Chairman Rs.7,000=00 per month.

##. Rule-5(2) is now required to be considered, which reads as under :

'If a Chairman or Member at the date of his appointment as such is a retired Government servant and is in receipt of pension from the Government, the Governor shall determine whether his pension shall be held in abeyance and, if so whether wholly or in part; or in the alternative, shall determine whether the pay fixed by this regulation shall be reduced by an amount not exceeding the amount of such pension including such portion of it as may have been commuted, if the pension is allowed to be drawn in full.'

Thus, under the aforesaid Rule-5(2) the duty is cast upon the Governor to fix the salary of Member of a Commission who was appointed as a Member after his retirement and the Governor shall determine, whether his pension shall be held in abeyance either wholly or in part or in the alternative shall determine whether the pay fixed by this regulation shall be reduced by an amount not exceeding amount of such pension including such portion of it as may have been commuted if the pension is allowed to be

drawn in full.

##. There is no dispute that the petitioner retired after attaining the age of superannuation and it was not the case of voluntary retirement, as is the case with the other two persons, namely, Shri Zutzhi and Shri Shah. On account of immediate requirement, these persons were appointed. They gave certain conditions retaining pensionary benefits, and looking to the exigency of the situation, their conditions were accepted by the Governor. This is a distinguishing feature in the instant case, inasmuch as, the petitioner did not offer any precondition that he will accept appointment only in case he is permitted to retain full pensionary benefits. The Governor, therefore, acted in accordance with Rule-5(2) of the Regulation and directed rejection of full pensionary benefits to the extent of Rs.2,400=00. In doing so, it can not be said that the Governor acted in violation of Regulation-5(2), nor it can be said that Regulation-5(2) is discriminatory in nature or his hit by Arts.14 and 16 of the Constitution. No guideline is required to be given to the Governor while exercising power under Regulation-5(2), inasmuch as, clear discretion has been given to the Governor to act in a particular manner, and it can not be presumed that the first citizen of the State, while exercising discretion will act arbitrarily, nor it can be said that he acted arbitrarily in the matter.

##. I also do not find any force in the contention of Shri Mehta that policy decision has to be taken by the Governor. The Governor has to examine individual cases and has to act in accordance with Rule-5(2) of the Regulation. No policy decision is, therefore, required to be taken by the Governor, nor any direction is required to be given for framing the guidelines, how the power of the Governor can be exercised under Rule-5(2) of the Regulations.

##. Further, I do not find any force in the contention that Regulation-5(2) is ultra vires. The preamble of the Regulation shows that the Regulations were framed, in exercise of powers conferred by Article-318 of the Constitution, by the Governor of Gujarat. Consequently, the regulations framed are intra vires and not ultra vires. I also do not find any force in the contention of Shri Mehta that there has been discrimination amongst the same class, namely, Members of Public Service Commission. The employees who are serving in other departments and who have to their credit still some period in service before superannuation, constitute a distinct class from

the employees or officers who have already retired after attaining the age of superannuation. Of course, there can not be any discrimination between retirement on attaining the age of superannuation, seeking voluntary retirement or tendering resignation. However, if offer is given to an employee or officer serving in other departments to accept the job of Member or Chairman of the Public Service Commission, and if he accepts the offer, naturally he has to resign or retire from the original post. In accepting the offer, such officer can put certain conditions, and if, such conditions are put by him are accepted by the Governor, he becomes entitled to salary and allowances subject to the conditions put forward by him and accepted by the Governor. If, conditions of such officer were not acceptable to the Governor, such officer may not be willing to accept the offer for the job of a Member or a Chairman of the Commission. He would have liked to serve on the original post, and if, in such situation a condition was offered claiming full pensionary benefits, it can not be said that there has been discrimination between the persons employed to attend a similar kind of work. The persons who have retired after attaining the age of superannuation, constitute a distinct class. Consequently, there has been no discrimination, nor it can be said that Art.14 of the Constitution has been violated.

##. In the result, I do not find any merit in this petition, which is hereby dismissed with no order as to cost.

February___, 2001. [ D.C. Srivastava, J.]

/sakkaf